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Shadow files: Accountability, authority and documentary fragility

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Much of the courtroom infrastructure in India is premised around paper and the production and maintenance of files. Through my ethnography of terrorism cases in Delhi, I saw how defence lawyers consulted their clients only in rare instances: they were more concerned about what the police had written in their documents and what the judge had transcribed into the court's file. In several instances, hearings in some cases could not proceed – not because the accused were not present, but because the clerk had forgotten to bring the case file to the courtroom.

Its centrality to the trial process has to do with two dimensions of the file: first, its epistemological role in the production of legal 'facts'; and second, its material role in symbolizing a judicial system governed by norms of accountability and authority. Several scholars have argued that the existence of files, and the knowledge produced by these files enabled the fabrication of state authority, and by extension, that the material fragility of files destabilizes state power. In contrast, I show how this fragility can become the very basis through which authority and official knowledge can be produced.

This essay shows the relationship between the epistemological function of the file, its fragility, and ideas of state authority. It does so through the story of a petition filed in the Supreme Court originating from the state of Jammu and Kashmir. In 1999, Masooda Parveen, filed a case against the Indian Army and the Kashmiri state police, asking the court to order them to pay compensation and damages for their role in the killing of her husband, Ghulam Mohi-ud-din Regoo. While she claimed that her husband had been a victim of state brutality, both the army and the police claimed that he had been a terrorist who had been killed by his own explosives. In response to her petition, the army produced documents to buttress their version of the events surrounding Regoo's death: that he was a terrorist who had been killed by his own explosives. The army claimed that the police had conducted an inquest into Regoo's death, which had exonerated the army. The police, for their part, submitted documents that supported the army's general narrative, but contradicted the time of Regoo's

arrest, the time of his death, and other key details leading up to and following his death. Most notably, the police said that the inquest file had been ‘lost’, and that the findings could not be traced.

The Supreme Court eventually dismissed her petition after 8 long years. As I show, the decision fundamentally had to do with the materiality of the file and its power to create and destroy different versions of reality. In this essay, I show that files can produce juridical “truth,” and that Parveen had lost because she had no files that could produce her version of reality. Though the army and the police produced documents that contradicted certain details in the other’s narrative, they had the papers to produce their competing versions of reality. Parveen, in contrast, did not have the power to produce these documents, and hence could not produce a narrative which demonstrated the army’s culpability in her husband’s death.

In their attempt to locate the original inquest file, the police produced a “shadow file” that reproduced a selection of documents from “lost” original file. In doing so, I show how the police were able to construct an alternative version of reality. In making these arguments about the role of the file in producing versions of reality, I also show how the material vulnerability of the file produces state authority.

Before discussing Parveen’s petition in detail, in the next section I deal with epistemological role of the file. The file’s most basic function is to provide an authoritative account of the world. In its judicial avatar, the file is space through which juridical truth is produced. But as other ethnographies of courtroom processes in India have shown¹, the trial process has the power to narrate one’s life away and the file can take one’s world as one knows it and replace it with another.² Therefore, the file does not just reflect the world, but actively produces it.

In section 3, I deal with scholarship on another aspect of the files power: its materiality and its relation to notions of authority and rule. While the files’ material signs – for example, the seals, insignia, signatures – serve to convey the authority of the state, scholars have noted that once a state institutes governance through means of

¹ Pratiksha Baxi *Public Secrets of Law: Rape Trials in India* (Oxford University Press, 2014); Moyukh Chatterjee. “The impunity effect: Majoritarian rule, everyday legality and state formation in India” (2017) *American Ethnologist* Vol. 44, No. 1, 118.

² Barbara Yngvesson and Susan Coutin “Backed by Papers: Undoing Persons, History and Return.” (2006) *American Ethnologist*. Vol. 33(2): 177-190; Kamal Sadiq *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. (Oxford University Press, 2008).

paper, this rule is undermined by practices of mimicry, forgery and fabrication. Accordingly, scholars argue that rhetoric of the stability of a rule based on paper has been constantly betrayed its material fragility. In this essay, I argue that authority of the state is not undermined by this material fragility. Rather I argue, it is the capacity of the file to be copied, forged and fabricated – and as we will see, ‘lost’ – that produces the authority of the state.

I trace these arguments – about how the material fragility of the file produces knowledge and state authority – through a detailed discussion of Parveen’s case. In section 4 of this essay, I show how the army and police construct different versions of reality through file protocols. Further, I show how the army and the police used the shadow file to construct an alternative history of the events leading up to Regoo’s death, thereby evading responsibility for the killing.

2. Files *produce* reality

At their most basic level, files are imagined as methods of recording the world. For example, the early colonial state in South Asia imagined files as “photographs – of the ruled for the rulers.”³ The file emerges as a form of technology that provides an accurate representation of the land and people ruled by the state, and as a symbol of the transition from despotic rule to the rule of law. It is because the files were seen as a transparent medium that recorded governmental action as well as the life of the people that the state ruled over, files were seen as central to imparting a civilized and accountable form of government.⁴ The rule by this government of paper was a core feature of the colonial State’s claim to establishing accountability and hence the rule of law in India. The production of files entailed the production knowledge of the people and places allowing the colonial state to ostensibly know and participate in the rule of distant territories and people. By insisting that written records be maintained and transmitted from India to London, the aim was to ensure that the government in India would be answerable to the British government.⁵ Colonial rule brought with it

³ Richard Saumarez Smith “Rule-by-records and rule-by-reports: Complementary aspects of the British Imperial rule of law” (1985) *Contributions to Indian Sociology* Vol. 19, Is. 1, 153.

⁴ Martin Moir ‘*Kaghazi Raj*: Notes on the documentary basis of Company rule 1773 – 1858’ (1996) *Indo-British Review: A Journal of History* Feb. 1996, pp. 185.

⁵ *Ibid.*

the proliferation of rules, manuals, reports, surveys and other documents for an ever-increasing number of spheres of life. Detailed rules were enacted which specified in meticulous detail how documents of various types were to be prepared, stamped, registered, stored, accessed, transported, and destroyed.⁶

Files do not merely record the world, but as scholars have shown, files actively *produce* versions of it. Vismann argues that the Latin maxim – *quod non est in actis, non est in mundo* [what is not in the file is not in the world], that comes up in literary and judicial texts referring to the written foundation for Roman court proceedings – summarizes the performative operation of the law in constructing reality.⁷ According to this idea, reality is what is found in files and if the file and the world do not coincide, it is up to the world to prove that, something not on file indeed exists.

This idea of the ability of the file to produce its own regime of facts is what Emma Tarlo has called a ‘paper truth’.⁸ Tarlo argues that the documentary practices of the state are not accurate representations of objects outside of the file, but rather produce them. Similarly, Dery offers the term ‘papereality’ to denote the ways in which forms of documentary representations take precedence over and even replace the things represented.⁹ In his ethnography of how the Pakistani government attempted to acquire land to build its capital city, Hull tracks official and unofficial graphic artifacts, and argues that files did not just refer to the land and people, but actively produced them. This idea of the file producing objects and persons is starkly demonstrated in Hull’s discussion of buildings and people that were referred to in the file, but did not exist outside of it.¹⁰

3. Materiality and file-power

Another aspect of the file’s power has to do with its materiality. Hull and Vismann argue that papers operate in a semiotic ideology; that is, the way the paper appears,

⁶ Matthew Hull *Government of paper: The materiality of bureaucracy in urban Pakistan* (University of California Press, 2012), 10

⁷ Cornelia Vismann *Files: Law and media technology* (Goeffrey Winthrop-Young trans., Stanford University Press, 2008).

⁸ Emma Tarlo *Unsettling memories: Narratives of India’s Emergency* (Permanent Black, 2003).

⁹ David Dery “‘Papereality’ and learning in bureaucratic organisations” (1998) *Administration & Society* Vol. 29, Iss. 6, pp. 677-689.

¹⁰ Hull (n. 6) 191

the quality of paper, the layout, the stamps, insignia that the paper bears determines its value and authenticity,¹¹ but more fundamentally, conveys the authority of the state.¹² The production of files is also seen as a performative exercise of state power. Akhil Gupta conceives of the developmental state as a performative writing machine that inflicts a ‘structural violence’ upon its poor citizens. He argues that the practice of writing ought to be seen as the central activity of state power.¹³ It is bureaucratic writing that is performative of sovereign power, he argues – while aimed at alleviating the conditions of poverty – that serves to exclude the largely illiterate poor from participating in state power. While bureaucratic writing is put to instrumental uses, Gupta argues that the state’s writing is constitutive in both “forming and informing the state.”¹⁴ Writing and the production of files therefore have a double function: it both provides a picture of the poor over whom the state could then exercise its power, but it also was a performative exercise of state power.

Scholars of paperwork have underlined how the materiality of files was both central to claims of sovereign and bureaucratic authority and at the same time a source of vulnerability. Writing on the introduction of files in early colonial south India, Raman argues that while it was meant to sustain the idea that the colonial regime was bringing the rule of law to the subcontinent, it actually produced a crisis of attestation.¹⁵ Once the state introduced a rule by files and documents, it also introduced the possibility that its documents could be forged and fabricated, thus undermining its rule by paper. Further, as Kafka has argued, the materiality of file – the fact that files can be stolen, soaked and reduced to a pulp – meant that “sovereignty itself - seeming to have been corrupted and corroded by the ... reliance on paperwork.”¹⁶

¹¹ *Ibid* 14.

¹² *Vismann* (n.7). Vismann details the ways in which documents in early medieval Europe bear various insignia and seals. Their function is not only to authenticate, but also, to impress. She argues that the layouts of these documents are a “gesture of power.” (p. 72)

¹³ Akhil Gupta *Red Tape: Bureaucracy, Structural Violence and Poverty in India* (Duke University Press, 2012), 150.

¹⁴ *Ibid*, 142.

¹⁵ Bhavani Raman *Document Raj: Writing and scribes in early Colonial South India* (University of Chicago Press, 2012), 137-140.

¹⁶ Ben Kafka *The demon of writing: Powers and failures of paperwork* (Zone Books, 2012), 73.

For Das, however, the material fragility of official paperwork does not undermine state power, but rather produces it. She argues that it is in the copying, mimicking, forgery and circulation of these documents that state authority is produced.¹⁷

Thus the materiality of files that for Raman and Kafka paved the way for undermining authority of the state, for Das is that which enables the authority of the state to be produced. In this paper I am interested in the link between the capacity of files to produce the world and the materiality of the file, and the relationship between this materiality and ideas of state authority. In the next section I look at how the ‘lost file’ and the shadow file do not undermine sovereignty, but buttresses it.

4. The production of state authority through the file’s fragility

In this section I look an instance of a ‘lost’ file to highlight the link between the file’s claim to represent state authority, and it’s ability to determine reality. As the file is the technology through which state records are maintained – including records of state crimes – the ‘lost’ file is a way for the state to avoid accountability.¹⁸ It is a cruel acknowledgment of the fact that files hold worlds within them, and to destroy the files, is to destroy those worlds and replace them with others.

I reconstruct the story of the ‘lost’ inquest file through the court file of a Supreme Court case titled *Masooda Parveen v. Union of India*.¹⁹ The court file – and hence the case as well – was initiated by a petition filed by Masooda Parveen regarding the extrajudicial of her husband, Ghulam Mohi-ud-din Regoo. Parveen’s case was filed against the backdrop of the Kashmiri struggle for independence. The Indian government has responded to the long-standing independence movement in Kashmir with overwhelming force. Indian, Kashmiri, and international human rights organisations have documented widespread and systematic extrajudicial executions, enforced disappearances, torture, and rape of civilians by the Indian Army and paramilitary forces.

¹⁷ Das (n.3) 177-178.

¹⁸ Holly Wallis (2012) “British colonial files released after legal challenge” *The BBC* (18 April 2012). <<http://www.bbc.co.uk/news/uk-17734735>> accessed on 9 December, 2014; David M. Anderson “Mau Mau in the High Court and the ‘lost’ British Empire Archives: Colonial conspiracy or bureaucratic bungle?” 2011 *The Journal of Imperial and Commonwealth History* Vol. 39, No. 5, p. 699.

¹⁹ (2007) 4 SCC 548

The petitioner's and the army's versions of reality

Parveen alleged that the army had murdered her husband – Ghulam Mohi-ud-din Regoo, in February 2008, at the army's Lathepora camp in Kashmir. She wrote numerous letters to several state authorities, including the Chief Minister of Jammu and Kashmir and the Prime Minister of India, asking for an investigation into her husband's death and compensation from the state and national governments. One of these letters was addressed to the Supreme Court of India, which referred her letter to the Supreme Court's legal aid committee. The committee wrote to Parveen, asking her to file a case before the High Court of Jammu and Kashmir. Parveen declined to do so, stating that the High Court was unable to give her justice, implying that the High Court was under the thumb of the Indian government. She therefore wrote back to the Supreme Court's legal aid committee stating that she wanted the Supreme Court to rule on her case.

Ultimately, her case was referred to a lawyer who filed a petition on her behalf. According to Parveen, a pro-government militia had been harassing her husband—a lawyer and saffron merchant in rural Kashmir—for protection money for some time. According to her, in 1994, a pro-government militia informed the army that Regoo was a terrorist, and the army had illegally detained him for three months. Regoo, after being put through a “detailed interrogation,”²⁰ was found to be innocent of the accusations leveled against him.

According to Parveen's petition, on 1 February 1998, a patrol party of the army's 17th Jat Regiment, along with pro-government militants, arrived at their residence. The house was searched and nothing incriminating was found, but the patrol party took him away, nevertheless. Regoo was taken to the army's Lathepora base camp where he was tortured to death. Bombs were then strapped to his body and detonated, after which the remains of the body were handed over to the Pampore police station. According to the army, an entry had been made in the daily diary of the police station regarding the circumstances of Regoo's death.

As the name suggests, this daily diary (or DD in police parlance) records certain events that happen in the jurisdiction of that police station, including the coming and going of police officials, the evidence that is brought into the police station, and

²⁰ Page C of the Supreme Court file, Writ Petition No. 275/1999, hereafter referred to as “Court file”. On file with the author.

information about the commission of serious offences. The DD is recorded on carbon paper (so that there are duplicates of every entry), and is recorded by the designated station house officer.

The DD No 24, dated 3 February 1998, that Parveen submitted was ostensibly prepared by the Pampore police station upon receiving information from the army regarding Regoo's death. The DD reflects the information that the army says it gave the police. According to the diary entry, Regoo was taken into the army's custody where he confessed that he was a Pakistan-trained militant and a former "divisional commander of the Al Barq militant outfit." According to the diary entry, Regoo had told the army officers present at the interrogation that he could lead them to a militant hideout. Several army officials had taken Regoo to the "hideout." According to the army, the entrance of the hideout had been rigged with explosives that had detonated when Regoo had tried to enter, causing his death.²¹

This narrative of Regoo's death as produced by the army in DD No 24 is important, because the army was aware that the bureaucratic logic of the state requires everything to be documented and that, in particular, the death and its reasons must be recorded somewhere. They are also aware that documentation *produces* juridical truth. Hence, they use official paperwork to create a narrative of Regoo's death that both explains it as well as exonerates the security personnel from having caused it.

The army, in its response to the petition, repeated the story of Regoo's death that was narrated in DD No 24. It sought to dispute Parveen's narrative by also stating that the Pampore police had undertaken an inquest after the army had handed over Regoo's body to the police and found that Regoo had died in the manner stated by the police. The army also submitted the documents produced during this inquiry by the police, which included:

²¹ The story told by the police in this report follows a well-known historical formula used by Indian security forces to justify killing. In the documentation relating to these deaths—known in India as "encounter" deaths—the police often narrate the following sequence of events: they apprehend a militant, the militant says he can lead them to an arms cache, the arms cache is rigged with explosives, the militant dies. Other variations on this script include the "militant" trying to escape, or managing to grab a gun and shoot at the police, and the police then firing back to prevent the escape or in self-defence. These narratives all end with the security personnel killing the "militant." Such narratives pepper documentary records of extrajudicial killings in many parts of India. (International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir and Association of Parents of Disappeared Persons 2015; Kumar et al 2003; Andhra Pradesh Civil Liberties Committee 1985).

1. Seizure memos from Regoo's "hideout": "Seizure memos" are documents written by the police that record the physical objects taken into custody by them while investigating an offence. In this case, the seizure memos list the arms allegedly seized from the "hideout."
2. A letter written by an army officer to the Pampore police station requesting that a first information report (FIR) be registered. An FIR is the first complaint that a police station receives regarding an offence. In this case, the FIR replicates the army's narrative of events, and in this way seeks to justify its own closure.
3. The daily diary entry of the Pampore police station, which acknowledged receipt of the army's letter and stated that the FIR had been registered.

These three documents along with others submitted to the court, allowed the army to construct the narrative that Regoo was a captured terrorist who had been killed by his own booby trap. The, however, last document became the subject of hearings over the next few months. The DD entry recorded by the Pampore police station (that was filed by the army to the Supreme Court) bore the following notation at the end:

It is worthy to mention that matter abovementioned does not require any further action by the police. Even then this matter will be investigation (sic) will be conducted as per conditions on the spot and departmental actions will be conducted and **the proceeding (sic) u/s 174 Cr.P.C. will be conducted** and SI Tahir Kaiser is hereby directed to conduct proceedings u/s 174 CrPC²² (emphasis added.)

The army provided a DD entry that it says was produced by the police, that stated that the police were commencing "proceedings u/s 174 CrPC." Section 174 of the Code of Criminal Procedure, 1973, prescribes the mode and purpose of conducting an inquest into the cause of a person's death. In this notation, army claimed that the police were going to undertake an inquest into Regoo's death. Even though this showed that the police had prejudged the matter as not requiring "any further action by the police," because of the specific averment that the police had ordered inquest proceedings, the

²² Court file 49–50 (Counter-affidavit filed by the Union of India).

army committed the police to showing that they—the police—had conducted an inquest to determine Regoo’s cause of death.

In response to this statement (that inquest proceedings had been conducted by the police), Parveen, in her rejoinder affidavit stated:

...no such investigation as contemplated under S. 174 appears to have been conducted by the police. On the other hand it is now learnt that the police have since closed the investigation...The case is now reported as a case of accidental death...²³

At the hearing before the Supreme Court, the army’s lawyer stated that the police had conducted an inquest and that it had found that the “allegations made by the petitioner were not true.”²⁴ Despite the army’s denial of Parveen’s allegations, the police had now been committed to show that they had conducted a proper inquest into Regoo’s death because the documents that the army had submitted to the court stated that the police had conducted such an inquest. The court directed the lawyer for the police to place the “inquest report and other connected documents” on the court’s record.

The lawyers for the state police did not appear in court for the next couple of hearings. At one of these hearings, the Supreme Court’s frustration is evident as its order notes that the state’s lawyer seemed to have “disappeared from the scene,”²⁵ and that the court was “in the dark as to what investigation was done pursuant to the first information report lodged in connection with the incident in question.”²⁶ As the state was not represented in court, the Supreme Court issued an order directly to the chief secretary (the highest bureaucrat of the state government) to produce all the documents connected with the inquest.

At the next hearing, a new lawyer for the state finally appeared in court and filed a reply to Parveen’s allegations. There were two noteworthy aspects to the police’s reply. First, that while it had submitted documents that produced a narrative that broadly aligned with the army’s, it differed in terms of details. Second, with regard to the inquest report, the state’s counter-affidavit contained an averment that only a

²³ Court file 62 (Rejoinder-affidavit filed by Masooda Parveen).

²⁴ Order dated 22/3/2006, on file with author.

²⁵ Order dated 19/4/2006, on file with author.

²⁶ Order dated 19/4/2006, on file with author.

“shadow file” was available—indicating that the original inquest report had been “lost.” I will now focus on each of these points in turn.

The police produce another version

The police’s response to Parveen’s allegations, meant that the file did not contain just two competing narratives—that of the petitioner and of the government—but *three*: the petitioner’s version, the army’s, *and* that of the police (Figure 1).

According to the petitioner and the police, the army arrested Regoo at 8:30 p.m. on 1 February 1998. According to the army, he was arrested at 8:30 p.m. on 2 February 1998. According to the police, Regoo died at 3 a.m. on 2 February 1998, while the army states that he died a full 24 hours later. Importantly, there is a discrepancy between the two versions as to which DD entry first documented Regoo’s death: according to the police, it was DD No 23, dated 2 February 1998, but according to the army, it was DD No 24, dated 3 February 1998. The army and the police even produce two different post-mortem reports; though they both insist only one post-mortem examination was ever performed!

Figure 1. Comparison between three versions of the events surrounding Ghulam Regoo’s death.²⁷

Event	Petitioner’s version	Police version	Army version
Date of arrest	1 February 1998	1 February 1998	2 February 1998
Time of arrest	8:30 p.m.	8:30 p.m.	8:30 p.m.
Time of death	Sometime on 3 February, the date the body was handed over to the family	3:00 a.m. on 2 February	2:30 a.m. on 3 February
DD/FIR details	DD No 24, dated 3 February 1998	DD No 22, dated 2 February 1998	DD No 24, dated 3 February 1998

²⁷ Adapted from People’s Union for Democratic Rights (2007: 11).

Number of hours of detention before death	At least 30 hours	6½ hours	6½ hours (but 24 hours later than the police version)
Number of soldiers injured in the “recovery“	No statement	One	Three
Witnesses to the death	The witnesses’ testimony produced by the police was false. The petitioner submitted affidavits from the police “witnesses“ stating they had never been examined by the police.	Two witnesses—Regoo’s brother and his neighbour.	No witnesses to the death.
Events after the death	The death occurred at Lathepora camp. The body sent to Pampore camp. Unit of Pampore camp handed body over to Pampore police.	After receiving information about the death, the police proceeded to the spot and began investigations. They took the body to the sub-district hospital for the post-mortem.	The post-mortem was conducted at Civil Hospital, Pampore, and then the body was handed over to Pampore police. However, the documents provided by the army indicate that the post-mortem was conducted after handing over the body.
Date and time of post-mortem	No statement.	10:00 a.m. on 3 February 1998; conducted by the police at sub-district hospital, Pampore.	1:30 p.m. on 3 February 1998; conducted by the army at Civil Hospital, Pampore.

Post-mortem documentation	No statement.	No cause of death; conducted by the assistant surgeon, Pampore.	No cause of death; no signature; no details of examining doctor. Report incomplete.
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The file ultimately presented to the court contained three possible narratives. Both the army and the police generated narratives through documents that agreed on the point that Regoo was a terrorist who had been killed by his own explosives but they differed on the details surrounding the death. They not only produce different times of Regoo's death but they also differ substantially on the events surrounding the death—the number and identity of the witnesses, the number of injured soldiers—and on the events subsequent to Regoo's death. The army's own documents regarding the time the post-mortem was conducted and when the body was handed over to the police also contradicted their own narrative. Further, the police produced affidavits allegedly signed by Regoo's brother and his neighbour that confirmed the narratives of the police and army (though the testimonies confirmed the time stated by the police). The petitioner, in response, produced an affidavit signed by Regoo's brother stating that he had never been examined by the police and had never signed an affidavit at the behest of the police, implying that the testimony submitted by the police was fabricated.

By pointing out the differences in the narratives of the army and the police, the petitioner's lawyer argued that as the records of the police and the army did not corroborate each other, neither narrative could be believed hence her version of the events must be true. But her lawyer could not produce any documents that could corroborate her version of events. In dismissing the petition, the court held that the differing versions of reality created by the army and the police were both simultaneously plausible. But because Parveen's lawyer could not produce documentation to back up his version of reality, there was no document to suggest that the events as suggested by the petitioner could have occurred.

Parveen's lawyer needed documentation to buttress the petitioner's version of events. As Parveen herself could not produce documents that authenticated her version of events, her case had to rely on the files produced by the state. In order to convince the

court of Parveen's narrative, her lawyer hitched his arguments to the lost inquest file, to which we will now turn.

The “lost” file and destruction of the petitioner’s version of reality

The second point of interest in the police's response was their claim that the original inquest file had been lost. Hidden in the text of the police's counter-affidavit, where the police had produced an alternate timeline of events regarding Regoo's death, is the following averment:

v) That so far as the original file was summoned by Tehsildar Pampore and was accordingly sent from P.S. Pampore to Sub-Division Office Awantipora, however a **shadow file** of the inquest proceedings conducted by P.S. Pampore is available...²⁸ (emphasis added)

The averment that only a shadow file could be submitted to the court, meant that the original file could no longer be found. This shadow file contained a selection of documents from the inquest proceedings conducted by the Pampore police. It contained a summary of the inquest proceedings and the statements of the army officials involved in Regoo's arrest, which concurred with the official version of events. But, most importantly, this shadow file did not contain any original documents from the inquest proceedings. The examinations and the cross-examinations of the witnesses, the evidence collected by the magistrate, and, most importantly, the magistrate's conclusions about the cause of death were all misplaced. The entire judicial record of the inquest proceedings had been “lost.”

Frustrated with the absence of the entire file, the Supreme Court directed the State of Jammu and Kashmir, and in particular the relevant district magistrate, to locate the entire and original file pertaining to the inquest proceedings.

The “lost” file creates another file

In his affidavit the District Magistrate stated that the entire inquest file could not be found, and he detailed the efforts made to locate the file. This effort to locate the missing file created another file. The district magistrate deputed a senior prosecuting officer to conduct an inquiry into whether the relevant file had been lost due to “sheer

²⁸ Court file 68 (Affidavit on behalf of the State of Jammu and Kashmir).

negligence, mismanagement of the records or due to mischief.”²⁹ The officer’s inquiry report (which was annexed to the district magistrate’s affidavit) stated that the file had been sent from the Pampore police station to another district official’s office and was returned “against an appropriate receipt,”³⁰ but nevertheless remained missing.

The need for a separate report on the missing file highlights the paperwork needed to maintain files, i.e., the work required to produce files that organise files. In order to track the “movement of the file,” the inquiry officer stated that he examined daily diary registers at police stations, the dispatch registers of different offices (documenting what files had been sent out from them), and the receipt registers of these offices (documenting what files had been received there). The inquiry officer examined various officials who deal with paperwork at the lower levels of the police bureaucracy: a reader, a *dak* (post) runner, various *moharirs* (file keepers), and *munshis* (clerks).³¹ The report pointed out lapses in how the files were being transported, and the mistakes that had occurred in how the files were recorded in various registers. The senior prosecuting officer recommended departmental action against several lower-level officials, and instructed the officials to keep looking for the missing file. What is also revealing about this account is that producing and maintaining files is a collective endeavour, and not the sole responsibility of one or two officials. The elaborate bureaucratic infrastructure to keep account of files, instead of fixing responsibility for the “loss” of the file, had managed to dissipate responsibility. As the production and maintenance of files was the result of a network of officials and other files³², no one officer could be held responsible for the file’s “loss.”

Human rights groups have argued that the use of shadow files “seems suspiciously common in cases involving human rights abuses by armed forces in Jammu and Kashmir”³³ and files are often “lost” during fires or civil unrest. As we have seen, a shadow file is a fragmentary reconstruction of the original lost file. And what is

²⁹ Court file 145 (Affidavit of the district magistrate of Pulwama).

³⁰ Court file 144 (Affidavit of the district magistrate of Pulwama).

³¹ Court file 151–152 (Affidavit of the district magistrate of Pulwama).

³² Matthew Hull “The File: Agency, Authority, and Autography in an Islamabad Bureaucracy.” (2003) *Language and Communication* 23 (3): 287–314.

³³ Jammu and Kashmir Coalition of Civil Society. *The Anatomy of a Massacre: The Mass Killings at Sialan August 3–4, 1998* (Srinagar: Jammu and Kashmir Coalition of Civil Society, 2014), 4.

particularly galling is that while it is known that only parts of the original file are available, no one knows what exactly has been lost. While the shadow file points to gaps, no one knows what had previously existed in that gap. Did the original documents point to the army's culpability? Or did it bolster the army's version of events? What did the lost papers say? Parveen's lawyer was asked this very question by the Supreme Court judges:

We put it to [Parveen's lawyer] repeatedly as to whether he could identify the information that could be obtained from the [original] police record. He could give no categorical answer to this query except to state that the reluctance of the civil authority to produce the file betrayed a guilty mind and the possibility existed that there was something in the file which needed to be hidden.

According to the court, Parveen's lawyers had "been at pains to emphasise that had the original file been produced the true story of the circumstances leading to Regoo's death would have been revealed and it is for this reason that the file had been withheld."³⁴ According to the Supreme Court, because the petitioner had tied her arguments to the inquest file, and could not prove her narrative of events without the "lost" file, her version of reality could not exist. Yet, at the same time, the two contradictory accounts provided by the army and the police could simultaneously exist, because they had provided documentation to back their versions of reality.

Parveen's lawyer had no choice but to rely upon the documentation produced by the state. But the "loss" of the file meant that any documentation that could buttress Parveen's version of reality was now lost. The version of reality that Parveen wished to present could not be produced, as she had no documents to produce it with. With this, the court found that there was no evidence to support the petitioner's versions of events except her own allegations, and they dismissed the petition.

5. Conclusion

One may ask why the Magistrate who conducted the inquest could not have been called to testify as to the contents of the inquest file. Unfortunately, the Supreme Court's records do not indicate whether this request was made. Perhaps the request was not made because of the underlying assumption that juridical truth is produced by

³⁴ *Masooda Parveen v. Union of India* (2007) 4 SCC 548, para 12.

documents and files, and not by people. Indeed, as Hull notes, the history of files and paper in South Asia was premised in a thoroughgoing rejection of trust in people.³⁵ Judicial truth is produced by files, and not by people.

In this essay I shown how this productive capacity is linked to the materiality of the file. We can see how the various actors jostle to control the truth produced by the files – the District Magistrate, the Supreme Court, the army, the police, the defence lawyers, the senior prosecuting officer and the file about the lost file. The control over the physical file is vital because the file has power to determine what the world is. In the course of attempts to produce the original inquest file, we can see that what is at stake in the materiality of the file – its productive capacity. Without the material object that is the file, for the law at least, the world cannot exist.

Further, I have tried to show the implications of the file for notions of accountability. As we saw in section 2, the file was imagined as essential to the ideas around the rule of law. The constant writing down of all actions by the state was supposed to render state action legible and hence rational. Instead what we have seen here is confusion and contradiction.³⁶ The police and Army records, which should match each other, do not. They differ even on basic things like DD numbers, the number of post-mortem reports, and even on the date of Regoo's death. This deliberate obfuscation-via-documents is present even in the Supreme Court's order where it barely refers to these police records. Far from producing accountability, these documents enable impunity. Lastly, I have showed that the material fragility of the file is what enabled a murderous form of state authority to emerge. While Parveen's lawyer was focused on the contents of the 'lost' file, the people who (probably deliberately) misplaced the file saw it for what it was: a material object. Here the loss of the file did not undermine or challenge state authority, but had quite the opposite effect: materiality of the file also enabled the authority of the state to grow in murderous proportions.

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³⁵ Hull (n. 6) 8

³⁶ Mathur points out that the transparency and accountability that supposedly accompanies files and documentation is not a natural effect, but rather has to be produced. Nayanika Mathur *Paper tiger: Law, bureaucracy and the developmental state in Himalayan India* (Cambridge University Press, 2014), 81-96.

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